



Winston H. Hickox
Secretary for
Environmental
Protection

State Water Resources Control Board

Executive Office

1001 I Street, 25th Floor, Sacramento, California 95814
P.O. Box 100, Sacramento, California 95812-0100
(916) 341-5615 ♦ FAX (916) 341-5621 ♦ www.swrcb.ca.gov



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June 14, 2002

To: Enclosed List of Parties To
Exchange Information

PETITION OF IMPERIAL IRRIGATION DISTRICT AND SAN DIEGO COUNTY WATER AUTHORITY FOR APPROVAL OF LONG-TERM TRANSFER OF CONSERVED WATER

This letter confirms the schedule for closing briefs that I set at the close of the hearing on May 30, 2002, and addresses other procedural matters concerning the remainder of the hearing. As discussed previously, this letter also includes a list of key legal issues that the parties are encouraged to address in their closing briefs.

Closing briefs must be received by the State Water Resources Control Board (SWRCB) by 12:00 p.m. on July 3, 2002, and served on the other parties by that date. The requirements for submittals and service on the other parties remain the same as set forth in the February 6, 2002, hearing notice. I have not set a page limit on closing briefs. In addition to briefing legal issues, I strongly encourage the parties to attach proposed findings of fact, including citations to the administrative record, to their closing briefs.

After Imperial Irrigation District (IID) has certified the Final Environmental Impact Report (FEIR) for its water conservation and transfer project, the parties will be afforded the opportunity to submit supplemental briefs on any changes to the environmental document. The deadline for supplemental briefs will be determined at a later date.

I have held the administrative record open for introduction of the FEIR. As stated in my May 21, 2002, letter to the parties, I intend to accept the FEIR into evidence unless we receive objections from the parties. If necessary, we have reserved July 8, 2002, and July 9, 2002, to hear direct testimony from witnesses for IID concerning any changes to the FEIR, and to consider accepting the FEIR into evidence. IID will be required to provide a list of witnesses, but will not be required to submit any direct testimony in writing, other than a summary of each witness' technical qualifications and a brief summary of the witness' role in preparing the FEIR. IID will be required to provide this information to the SWRCB by 12:00 p.m. on July 5, 2002, and serve the other parties by that date.

We have reserved July 15, 2002, and July 16, 2002, if necessary, to hear rebuttal testimony concerning changes to the FEIR. Any rebuttal testimony must be submitted in outline form. Any rebuttal testimony and other exhibits must be received by the SWRCB by 12:00 p.m. on July 12, 2002, and served on the other parties by that date. These deadlines are subject to change



if the FEIR is not certified by June 30, 2002. The parties will be afforded the opportunity to give brief oral closing statements at the close of the hearing.

The parties are encouraged to brief the key hearing issues set forth in the hearing notice. In addition, the parties are encouraged to brief the following legal issues:

1. Does the Law of the River (including the 1922 Colorado River Compact, the Boulder Canyon Project Act of December 21, 1928, and case law interpreting the Compact and the Act), allow the use of water by IID for purposes of fish, wildlife, and other instream beneficial uses?
 - a. Does the Act, which authorizes the Secretary of the Interior to enter into contracts for the storage and delivery of Colorado River water “for irrigation and domestic uses,” limit the purposes for which IID may use water under contract with the Secretary? If so, do these limitations apply to the use of water that is delivered in satisfaction of present perfected rights within the meaning of article VIII of the Compact?
 - b. Does article III, paragraph (e) of the Compact, which provides that Lower Division States, including California, may not “require the delivery of water, which cannot reasonably be applied to domestic and agricultural uses,” limit the purposes for which water may be used within the Lower Division States? Or does article III, paragraph (e) simply establish the measure of how much water the Lower Division States are entitled to receive? If the Compact limits the purposes for which water may be used, does this limitation apply to present perfected rights?
 - c. Does the Law of the River allow the holder of present perfected rights to change the place and purpose of use of water in accordance with state law, provided that the amount used does not exceed that which would be used in the absence of the change?
 - d. Does the Law of the River allow the use of water for the protection of fish, wildlife, or other instream beneficial uses where such use is required under state law in order to mitigate the adverse impacts of delivering water for irrigation or domestic uses?
2. Will the Interim Surplus Guidelines (66 Fed.Reg. 7772) remain in effect if IID, Metropolitan Water District of Southern California, and Coachella Valley Water District do not execute the Quantification Settlement Agreement (QSA) by December 31, 2002, but California reduces its water use to meet the benchmark quantities set forth in the Guidelines?

- a. The Guidelines provide that if the QSA is not executed by December 31, 2002, the Interim Surplus Guidelines will be suspended “until such time as California completes all required actions and complies with reductions in water use reflected in section 5(C) of these Guidelines” Is execution of the QSA a “required action” within the meaning of this section, or does the phrase “all required actions” refer to those actions necessary to meet the benchmark quantities?
- b. If the proposed transfer is not implemented beginning in 2003, will California nonetheless meet the 2003 benchmark quantity for agricultural usage of 3.74 million acre feet set forth in the Guidelines, and, if so, how?
- c. If the proposed transfer cannot be mitigated satisfactorily, is an alternative solution available?
- d. If the proposed transfer is not implemented, is there any other action that the SWRCB can and should take in order to ensure that California reduces its use of Colorado River water in accordance with the Guidelines?

Questions regarding this letter may be addressed to Tom Peltier, Hearing Coordinator, in the Division of Water Rights at (916) 341-5353, or Dana Differding, Staff Counsel, in the Office of Chief Counsel at (916) 341-5188.

Sincerely,

/s/

Arthur G. Baggett, Jr.
Hearing Officer

Enclosures

cc: Mr. Richard Katz, Executive Office [24th Floor]
Mr. Gary Carlton, Executive Office [24th Floor]
Mr. Andy Fecko, Division of Water Rights [14th Floor]
Mr. Tom Peltier, Division of Water Rights [14th Floor]
Ms. Dana Differding, Office of Chief Counsel [22nd Floor]
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

List of Persons Presenting Policy Statements

Enclosed List of Parties
To Exchange Information

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June 14, 2002